U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19297197

Date: DEC. 9, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a cybersecurity firm, seeks to classify the Beneficiary as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Beneficiary has sustained national or international acclaim and is an individual in the small percentage at the very top of the field.

The Petitioner then filed a combined motion to reopen and reconsider. The Director dismissed both motions. The Petitioner appealed that decision to us, and we dismissed the appeal. The matter is now before us on a motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

By regulation, the scope of a motion to reconsider is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reconsider the denial of the petition or the Director's dismissal of the Petitioner's first motion. Instead, the filing is a motion to reconsider our most recent decision. Therefore, we would not consider new objections to the earlier denial, and the present filing is not the place to make new allegations of error at prior stages of the proceeding. The immediate question before us is not whether the Director erred in denying the petition or dismissing the earlier combined motion, which we considered in our appellate decision, but whether we erred in dismissing the appeal. We will, however, discuss earlier steps in the proceeding to provide necessary context.

The Petitioner filed its petition in December 2019; the Director initially denied the petition in March 2020. In the March 2020 decision, the Director concluded that the Petitioner had met three of the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3), relating to participation as a judge of the work of others; original contributions of major significance; and authorship of scholarly articles. The Director determined that the Petitioner had not met three other claimed criteria, pertaining to membership in associations that require outstanding achievements; a leading or critical role for distinguished organizations; and high salary or other remuneration for services. Having granted three of the initial criteria, the Director then rendered a final merits determination, concluding that the Petitioner had not established that the Beneficiary had achieved sustained national or international acclaim among the small percentage at the very top of his field, as the statute and regulations require.

The Petitioner filed its combined motion in May 2020, arguing that it had established the necessary acclaim, and submitting further evidence in an attempt to support that argument. The Director dismissed the combined motion in August 2020, noting that much of the new evidence concerns events that occurred after the petition's filing date, which cannot establish eligibility as of the filing date as required by 8 C.F.R. § 103.2(b)(1).

The Petitioner appealed that decision in October 2020. The appellate brief consisted primarily of arguments that the Petitioner has established the Beneficiary's sustained acclaim. The most direct reference to the Director's October 2020 decision was the Petitioner's assertion that, while some of the evidence came into existence after the petition's filing date, "all the work done by [the Beneficiary] that led to his recognition was done prior to the filing date."

We dismissed the appeal in May 2021, focusing, as the Petitioner had done, on the assertion that the Beneficiary has achieved sustained acclaim.

On motion from the May 2021 decision, the Petitioner states: "We are filing this Motion to Reconsider so that the AAO [Administrative Appeals Office] may redetermine that the District Director [*sic*] did in fact err in dismissing the Petitioner's previous motions to reopen and reconsider and ultimately denial [*sic*] the underlying petition considering the totality of the evidence."

In its latest motion, the Petitioner identifies a number of claimed errors in the Director's August 2020 decision, stating, for example, that the Director did not sufficiently explain the grounds for dismissal of the motion. The time to raise these objections would have been in the October 2020 appeal, but the Petitioner did not allege these errors at that time. It is the Petitioner's burden to identify specifically any erroneous conclusion of law or statement of fact as a basis for appeal. 8 C.F.R. § 103.3(a)(1)(v). The Petitioner's untimely objections to newly alleged errors do not amount to good cause for reopening the proceeding; we did not err by failing to anticipate those objections or make them on the Petitioner's behalf. As such, the Petitioner's new assertions do not identify errors of law or policy in our previous decision.

The Director's August 2020 motion decision did not include detailed discussion of several merits issues because the Director had already made those determinations in the initial March 2020 denial notice. Our May 2021 appellate decision focused on merits issues because the Petitioner's appellate brief emphasized those issues.

Turning to those substantive issues, the Petitioner reiterates and expands upon prior assertions that the Beneficiary's sustained national or international acclaim is evident from the following factors:

- Membership in Sigma Xi and senior membership in the Institute of Electrical and Electronics Engineers (IEEE);
- Invitations to participate in panel discussions at professional conferences;
- Publication of scholarly articles, cited by others in the field; and
- Letters from various clients.

We addressed each of these issues in our May 2021 dismissal. On motion, the Petitioner maintains that the factors discussed above suffice to establish the Beneficiary's sustained acclaim, but the Petitioner's arguments in this regard are not persuasive. For example, regarding memberships, the Petitioner asserts that well-known figures such as Albert Einstein and Linus Pauling were senior members of the IEEE. It does not follow that every senior member has comparable stature to these Nobel laureates. We explained, in our last decision, that the documented requirements for senior member status appear to fall well below the statutory threshold of sustained national or international acclaim The Petitioner, on motion, does not establish that acclaim is intrinsic to any of the senior membership requirements discussed. We also previously noted that the IEEE has a higher level of membership, "Fellow," with more stringent requirements. It also bears repeating that, while the IEEE solicits applications for senior membership, members cannot apply or nominate themselves for fellow status.

The Beneficiary was not yet a member of Sigma Xi when the Petitioner filed the petition. As noted, a Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). We acknowledge the Petitioner's argument that the Beneficiary's achievements necessarily predate the recognition for those achievements, but it is the recognition that constitutes acclaim. Also, as discussed in our last decision, membership in Sigma Xi requires only "noteworthy achievement," defined so loosely as to encompass a great number of productive researchers.

The Petitioner maintains that the Beneficiary's "[p]articipation in the research panels necessarily required acclaim," and that "he would not have been invited" otherwise. The Petitioner does not identify any record evidence to establish that the particular panel invitations were based on acclaim rather than some lower threshold, such as subject matter expertise. The assertions of counsel do not constitute evidence,[1] and thus cannot amount to the "extensive documentation" that section 203(b)(1)(A)(i) of the Act demands.

The Petitioner asserts that "enthusiastic and public praise" is, by definition, acclaim, and that other researchers have offered such praise by citing the Beneficiary's articles in their own scholarly work. The Petitioner has not shown that scholarly citation amounts to "enthusiastic and public praise," rather than acknowledgment of source material as required by standards of scholarly integrity. Citation of one's work is not a rare accolade achieved only by a small percentage at the very top of the field.

[1] *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the Petitioner does not establish that the Beneficiary's work is among the most highly-cited in his field, which might have distinguished him from others publishing in the same field.

In our May 2021 decision, we discussed letters that the Petitioner had submitted in support of its May 2020 motion:

> In the context of the Beneficiary's acclaim, it is significant that the letters submitted on motion focused on the services that the Petitioner provided. Some letters did not mention the Beneficiary at all; others did so only to identify him as a member or leader of the team providing those services. . . .
>
> These letters amount to testimonials from satisfied clients; they do not show that the Beneficiary has earned sustained national or international acclaim in his field.

On motion, the Petitioner emphasizes that "these letters are from **well-established leaders** around the U.S. and they are discussing work that can only be accomplished by a select few and [the Beneficiary] was critical to the work being done." The Petitioner also contends that these letters express "enthusiastic and public praise," and, thus, acclaim.

From the context, and because the Petitioner provides no specific details about the letters, we cannot determine whether the Petitioner is referring to letters submitted on motion, or a different group of letters submitted in support of the underlying petition. Any reference on motion to the earlier letters would not establish error in our last decision. (The Petitioner had submitted the earlier letters as evidence of the Beneficiary's original contributions to his field, and the Director granted the "contributions" criterion in the March 2020 decision.)

As we noted in our prior decision, some of the letters submitted on motion do not mention the Beneficiary at all. The Petitioner does not explain how unpublished correspondence constitutes "public praise." The Beneficiary's involvement in projects for various clients is not intrinsically evidence of sustained national acclaim, regardless of the identities of those clients. Apart from the lack of corroboration, the assertion that the Beneficiary's "work can only be accomplished by a select few" speaks to the number of workers in a particular specialty, rather than the acclaim that those workers enjoy. (A high degree of specialization, by itself, does not constitute, or convey, acclaim.) The letters do not establish acclaim; they describe the work performed by a team of the Petitioner's employees, including the Beneficiary.

The Petitioner has not identified errors of law or policy in our May 2021 decision, and its assertions of adjudicative error rely heavily on subjective or uncorroborated assertions as to what constitutes acclaim in the Beneficiary's field. Therefore, the Petitioner's latest filing does not meet the requirements of a motion to reconsider.

For the reasons discussed, the Petitioner has not shown proper cause for reconsideration and has not overcome the grounds for dismissal of the appeal. We will therefore dismiss the motion to reconsider.

ORDER: The motion to reconsider is dismissed.